

Industrial Dispute Act 1947 Definition, Authorities

31st December 2020

By INDIAFREENOTES

The Industrial disputes Act 1947, was enacted in the post-independence era with a view to regulate the relationships of the employer and employee and to maintain peace and harmonious relations between the two.

The Industrial Disputes Act, 1947 extended to the whole of India and regulated Indian labour law so far as that concerns trade unions as well as Individual workman employed in any Industry within the territory of Indian mainland. Enacted on 11th March 1947 and It came into force 1 April 1947. It was replaced by the Industrial Relations Code, 2020.

Employer

The term employer has been defined under the industrial dispute act of 1947 under section 2(g) the employer according to the definition is the person authorized to do the work in the capacity as an employer under the leadership of either the Central Government or the state government or the local authority.

Industry

The term Industry is defined under section 2(j) of the act as any business, trade or undertaking manufacture or calling and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

an industry exists only where there is a relationship between the employer and the employee and where the former is engaged in business trade or undertaking and the latter is engaged in any calling service employment or handicraft.

Workmen

The term workmen have been defined under section 2(s) of the act which states that workmen mean a person who is employed in any industry to carry put skilled, unskilled, manual, technical, operational, clerical or supervisory work.

" appropriate Government" means

In relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning.

"Average pay" means the average of the wages payable to a workman:

- in the case of monthly paid workman, in the three complete calendar months,
- in the case of weekly paid workman, in the four complete weeks,
- In the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A.

" Banking Company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), having branches or other establishments in more than one State, and includes the Export- Import Bank of India , the Industrial Reconstruction Bank of India,] the Industrial Development Bank of India,] 6 the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989),] the Reserve Bank of India, the State Bank of India a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank]] as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);]

“Closure” means the permanent closing down of a place of employment or part thereof.

“Conciliation officer” means a conciliation officer appointed under this Act;

“Conciliation proceeding” means any proceeding held by a conciliation officer or Board under this Act.

“controlled industry” means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest.

“Court” means a Court of Inquiry constituted under this Act.

“Industrial dispute” means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

“Industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on: Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries,

The Act also lays down:

- The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.
- The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
- Unfair labour practices on part of an employer or a trade union or workers.

Scope and Extent of the Industrial Disputes act 1947

The Industrial disputes act of 1947 extends to the whole of India. it came into enforcement on 1st April 1947.

Principal objects as stated by the supreme court in the case of Workmen of Dimakuchi Tea Estate vs Management of Dimakuchi Tea Estate AIR 1958 SC

- 1) the act aims to promote the measures which are helpful in securing good and amity relations between the employer and the employee.**
- 2) An investigation and settlement of disputes between an employer and the employee, employer and workmen, workmen and workmen and giving them the right of representation in the trade unions.**
- 3) the legislation also tries to do away with illegal strikes and lockouts.**
- 4) it also helps to provide the relief to the workmen in the matter of lay off, retrenchment, closure of undertaking, etc.**
- 5) it helps to do Collective Bargaining.**

The Industrial disputes act is social legislation which tries to maintain a balance between the interest of the important pillars of the industrial establishment.

Objectives of the Industrial disputes act 1947

The Industrial dispute act of 1947 was enacted with the following objectives:

- a) To promote industrial peace**
- b) To do economic justice to the workmen**

The objective according to the preamble of the Industrial disputes act 1947 are:

- a) To make provisions for investigation and settlement of industrial disputes.**

b) The objective of all the labor legislation is to ensure fair wages and to prevent industrial disputes.

Authorities under the act:

There are various authorities under the act such as the works committee, conciliation officer, conciliation board, courts of inquiry, labour court, tribunal, national tribunal.

Works Committee:

This has been defined under section 3 of the act which says that each industrial establishment should have a works committee and the works committee will have equal representations from both the employer and the employee. It is to try to settle the dispute in the first instance through the process of mediation in the initial stage of the dispute. The works committee also time to time comments upon the matters in dispute.

Conciliation officer:

Section 4 of the Industrial disputes act 1947 talks about the provisions of the conciliation officer. It states that the appropriate government i.e. the central government, state government or the local authority will appoint such number of persons to be the conciliation officer as it thinks fit.

It is the duty of the conciliation officer to mediate and promote the settlement of industrial dispute. The conciliation officer can be appointed either permanently or for some point of time.

Board of Conciliation:

The board of conciliation are constituted under section 5 by the appropriate government.

The board of conciliation is constituted in order to promote the settlement of industrial dispute.

The board appointed consists of the chairman and two or four other members. Under the board the chairman is the independent person and the other persons appointed in equal numbers which represents the parties in disputes and the person who represents the party shall be appointed by the party. The party needs to appoint such representatives within the time prescribed and if the party fails to appoint the representatives within the time then the appropriate government can appoint the person to be the representative of the party.

A board needs to work according to the quorum prescribed but if the chairman or the other member as the case may be ceased to be available the board shall not act until a new chairman or member as the case may be has been appointed.

Courts of Inquiry:

The section 6 of the act further talks about the constitution of the court of inquiry in order to conduct inquiry upon the matter in dispute. The court of inquiry to be run by the independent person or persons as the appropriate government thinks fit. Where the court consists of two or more persons then any one of them shall be appointed to be chairman.

Labour Court:

Section 7 of the act talks about the constitution of the labor court by the appropriate government. It can create one or more labor court as it thinks fit for the adjudication of industrial dispute as specified under schedule II. It consists of one person to be appointed by the appropriate government. The qualifications of the presiding officer of the court shall be as follows:

- a) If he is or has been a judge of the high court
- b) He has for a period of not less than 3 years being a district judge or an additional district judge
- c) Has held judicial office for not less than 7 years
- d) He has been the presiding officer of a Labor Court constituted under any Provincial Act or State Act for not less than five years.
- e) He is or has been a Deputy Chief Labor Commissioner (Central) or Joint Commissioner of the State Labor Department, having a degree in law and at least seven years' experience in the labor department including three years of experience as Conciliation Officer.
- f) He is an officer of Indian Legal Service in Grade I with years' experience in the grade.

Tribunal:

section 7A deals with the provision of constitution of the one or more tribunal for the adjudication of dispute relating to the aspects as mentioned in schedule second or third. tribunal to consist of one person who shall be appointed by appropriate government.

The qualifications of the presiding officer of the tribunal are as follows:

- a) He is, or has been, a Judge of a High Court;
- b) He has, for a period of not less than three years, been a District Judge or an Additional District Judge;
- c) He is or has been a Deputy Chief Labor Commissioner (Central) or Joint Commissioner of the State Labor Department, having a degree in law and at least seven years' experience in the labor department including three years of experience as Conciliation Officer;
- d) He is an officer of Indian Legal Service in Grade III with three years' experience in the grade.

The appropriate government to appoint two persons as assessors to advise the tribunal.

National Tribunal:

section 7B deals with the national tribunal which is appointed by the central government constitute one or more national tribunal for the adjudication of industrial disputes which in the opinion of the central government involves questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in or affected by such disputes. the national tribunal shall be consisted of one person only to be appointed by the central government. in order to be appointed as the presiding officer of a national tribunal he should be or has been a judge of a high court. the central government can also appoint two persons as assessors to advise the national tribunal in the proceeding before it.

Disqualifications for appointment of the presiding officer of labor court, tribunal and national tribunal:

Section 9 c of the act talks about the provision relating to the disqualification of the presiding officer which states that if the person is not an independent person or if he has attained the age of 65 years then he cannot be appointed as the presiding officer of the labor court or tribunal or national tribunal by the central government.

Industrial Dispute Act 1947 Awards, Settlement

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As per the definition of Industrial Dispute, disputes of following Parties also come under Industrial Dispute.

- Employer and employer
- Employer and workmen
- Workmen and workmen

The Industrial Dispute Act, 1947 which extends to the whole of India came into operation on the first day of April 1947. As per Preamble of the said Act, it is enacted to make a provision for the investigation and settlement of the dispute and certain other purposes such as recovery of money from the employer in terms of Settlement or Award by making an application to the appropriate government. The purpose and aim of the Industrial Disputes Act 1947 is to minimize the conflict between labour and management and to ensure, as far as possible, Economic and Social Justice. The act has made comprehensive provisions both for this settlement of disputes and prevention of disputes in certain Industries.

Definition of Award:

Section 2(b) of the Industrial Dispute Act, 1947 defines Award as follows:

According to Section 2(b) of the Industrial Disputes Act, 1947 'Award' means an interim or a final determination of any Industrial Dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A.

Ingredients of Award:

To constitute Award under Section 2(b) of the Industrial Dispute Act, 1947 the following ingredients are to be satisfied:

- An Award is an interim or final determination of an industrial dispute.
- It is an Interim or final determination of any question relating to such dispute.
- Such interim or final determination is made by any Labour Court, Industrial Tribunal or National Industrial Tribunal.
- Award (Judgement) of Arbitrators under section 10A is an Award.

Method of settlement of Industrial Dispute:

In the interests of the industry in particular and the national economy in general, cordial relations between the employer and employees should be maintained. To ensure cordial labour management relations and to achieve industrial harmony, the following methods of settlement of industrial disputes are provided under the Act:

1. **Collective Bargaining:** Collective Bargaining or Negotiation is one of the methods for settlement of an industrial dispute. It plays significant role in promoting labour management relations and in ensuring industrial harmony

Collective Bargaining is a process/Method by which problems of wages and conditions of employment are settled amicably, peacefully and voluntarily between labour and management. In collective bargaining, the parties to the dispute i.e., the employer and the employees/workmen settle their disputes by mutual discussions and agreements without the intervention of a third party. Such settlements are called "bipartite settlement". Therefore, settlement of labour disputes by direct Negotiation or settlement through collective bargaining is always preferable as it is the best way for the betterment of labour disputes. Collective Bargaining is recognized as a right of social importance and greater emphasis is placed on it by India's five-year plans. The term 'Collective Bargaining' was coined for the first time by Sidney and Webb in their famous book 'Industrial Democracy' published in 1897. It means

Negotiation between an employer and group of workers to reach agreement on working conditions. N. W. Chamberlain (in his 'Source Book on Labour: 1958 p. 327) described collective bargaining as "the process whereby management and Union agree on the terms under which workers shall perform their duties". In simple word, collective bargaining means "Bargaining between an employer or group of employers and a bonafide Labour Union".

2) Conciliation:

Conciliation is a process, by which a third party persuades the parties to the industrial dispute to come to an amicable settlement. Such third party is called 'Conciliation Officer' of Board of Conciliation. Sections 4 and 5 of the act provide for the appointment of Conciliation Officer and the constitution of the Board of Conciliation respectively.

3) Voluntarily Arbitration: The expression 'Arbitration' simply means "the settlement or determination of a dispute outside the court". Parties to the dispute, without going to the Court of law, may refer the dispute/Matter to a person in whom they have faith, to suggest an amicable solution. Such person, who acts as a mediator between the disputants to settle the dispute is called "Arbitrator". The decision given by the parties, which is binding on the parties, is called "Award". Therefore, Arbitration is a judicial process under which one or more outsiders render a binding decision based on the merits of the dispute. Section 10-A of the industrial dispute act, 1947 confers on parties, power to enter into Arbitration agreement. The agreement must be in prescribed form and must specify the name/names of the arbitrator or arbitrators.

4) Adjudication:

When an industrial dispute could not be settled either through bipartite negotiations or through the Conciliation machinery or through the voluntary Arbitration, the final stage resorted to, for settlement of an industrial dispute is Adjudication or compulsory Adjudication, which envisages Governmental reference to statutory bodies such as Labour Court or Industrial Tribunal or National Tribunal. Section 7, 7-A and 7-B of the Industrial disputes Act, 1947 provide for the constitution of Labour Court, Industrial Tribunal and Labour Tribunal respectively.

Mediator

Conciliation, a form of mediation refers to the act of making a passive and indirect effort in order to bring two conflicting parties to a compromise. It is the "practice by which the services of a neutral party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement of agreed solution."

The conciliator or mediator tries to remove the difference between the parties by persuading the parties to rethink over the matter with a give and take the approach but does not impose his or her own viewpoint. The conciliator is at liberty to change his or her approach from case to case as he or she deems fit depending on other factors.

The Industrial Disputes Act, 1947 provides for conciliation, and can be utilised either by the appointment of conciliation officers; permanently or for a limited period or via the constitution of a board of conciliation. This conciliation machinery is at liberty to either take note of the dispute or apprehend dispute on its own or when approached by a party.

In order to expedite proceedings, time-limits have been prescribed. It is 14 days in the case of conciliation officers and 2 months for a board of conciliation. The settlement so arrived upon during the course of conciliation is binding upon the parties for the period that has been agreed upon by the parties or for the period of 6 months. It shall continue to be binding until revoked by either of the parties. During the pendency of the conciliation proceedings, before a Board and for seven days after the conclusion of such proceedings, the Act prohibits strike and lock-out.

Compulsory arbitration

Compulsory arbitration is arbitration of labor disputes which laws of some communities force the two sides, labor and management, to undergo. These laws mostly apply when the possibility of a strike seriously affects the public interest. Some labor contracts make specific provisions for compulsory arbitration should the two sides fail to reach agreement through the regular system of collective bargaining.

In cases where the government instructs the two parties to opt for the process of arbitration. The judgement produced by the arbitrator is binding on both the parties.

Memorandum of Settlement (MOS)

When both the Parties represent themselves before the Conciliation Officer then after reaching a conclusion persuaded by the conciliation officer, both parties enter into a Memorandum of Settlement which shall be binding on both the parties for the period. The settlement as mentioned in Section 2 (P) includes a written agreement signed by both the parties and executed copy be sent to the appropriate government. As per Rule 59 of The Industrial Dispute (Central) Rules, 1957, MOS must be executed in Form H.(4). The settlement shall come into force on the date of signing of MOS between the Parties and shall come to end as mentioned in the MOS or after expiry of 2 months' notice, where no date is mentioned in MOS.

Industrial Dispute Act 1947 Strikes, Lockout

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A strike is a powerful weapon used by trade unions or other associations or workers to put across their demands or grievances by employers or management of industries. In another way, it is the stoppage of work caused by the mass refusal in response to grievances. Workers put pressure on the employers by refusal to work till fulfilment of their demands. Strikes may be fruitful for workers' welfare or it may cause economic loss to the country.

For strike, the industrial dispute act under 2 (q) defines strikes as "a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment".

Common Reasons for Strike

Strikes generally occur in industries due to disputes between employees and employers, employees and employees or among employers and employers mostly due to the following issues:

- Working hours
- Working Conditions
- Salary, Incentive etc
- Time payment of wages
- Reduction in salary/wages
- Issue related Minimum wages
- Leave/Holidays
- Dissatisfaction with the company policy
- PF, ESI, Profit Sharing etc
- Retrenchment of workmen and closure of establishment
- Any other issue.

Under the following situation as given under section 22, on these grounds the strikes can be considered as illegal:

- Without giving to employer notice of strike within six weeks before striking.
- Within fourteen days of giving such notice.
- Before the expiry of the date of strike specified in any such notice as aforesaid.
- During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Further, the provisions under section 23 are general in nature. It imposes general restrictions on declaring strike in breach of contract in both public as well as non- public utility services in the following circumstances mainly:

- During the pendency of conciliation proceedings before a board and till the expiry of 7 days after the conclusion of such proceedings;
- During the pendency and 2 months after the conclusion of proceedings before a Labour Court, Tribunal or National Tribunal;
- During the pendency and 2 months after the conclusion of the arbitrator, when a notification has been issued under subsection 3 (a) of section 10 A;
- During any period in which a settlement or award is in operation in respect of any of the matter covered by the settlement or award.

Types of Strike

Primary Strike: The strikes that are directly projected against the employer are known as Primary Strikes. Below are types of Primary strikes which workers adapt to push the employer to get them on terms agreed to workers.

- Gherao is adopted by the factory workers to push the management to agree to their demand by restricting access to office or factory premises where nobody could move in or out.
- Picketing is the process of highlighting their issues on playcard or banners to show their demand to the public at large and media. In this union members are being talked to resolve the issue peacefully.
- Boycott is a process where no worker is allowed to carry out any work and union members push other workers not to do work and participate in their strike.
- Pen down strike where workmen come to work on a regular basis but do not do any work and sit idle for whole office hours.
- Go Slow Strike is also a very harmful way of strike where workmen intentionally work very slow to slow down operation. This harms the employer where order has strict timelines to deliver.
- Hunger Strike is the most common and oldest method used by workmen where they go for indefinite fasting and sit around factory or employer residence to project their demand.

Secondary Strikes: The other name for the secondary strike is the sympathy strike. In this, the force is applied against the third person having sound trade relations with the organization to indirectly incur a loss to the employer and the business. The third person does not have any other role to play in such a strike.

Nowadays third kind of strikes have also become popular which are adopted by the General Public to show their anger or objections against Government Policies for roll back of government policies. Recently we have seen outrage over Farmer's bill where Bharat Bandh, No Purchase at Government Mandis kind of actions has been adopted at various states.

Consequences of illegal Strike

Economic Consequences: Losses incurred by strikes are humungous and serious, in some cases can even lead to the bankruptcy of the industry. The economic losses caused by the strike may be serious for the employer. During strikes, production stops, sales go down, due to which rival companies use this opportunity to capture their market and industry loses its consumers and their trust, strikes badly affects the market goodwill of the company.

Both parties i.e, employer and employee are at loss; for employers the quick losses capital loss, loss of profits, the delaying of orders and loss of goodwill as well as the possible incurring of insurance or strike-breaking expenses while on the worker's side there is the loss of wages, the contracting of debts and all the personal hardships that may be involved.

The losses incurred by a strike are difficult to be calculated economically. Strike can have adverse effect leading to an unstable foreign investment in an economy. Furthermore, the negative effects on international trade include the hindrance of economic development and creating great economic uncertainty especially as the global media continues to share details, images and videos of violence, damage to property and ferocious clashes between strikers and security.

Social Consequences: the social consequences of the strike are serious, and mostly affect the employees; as they are the ones who are losing their wages, they are at greater risk of losing their jobs. Loss of wages or loss of jobs will directly affect in curtailing their consumption and expenses and further strikes in essential utility services effects the tripod of any industry i.e, suppliers, manufactures (both employer and employees) & customers.

A hostile attitude on the part of the employer towards their employees lead Dismissal of workmen.

Legal consequences: The legitimacy of a strike may rely upon the article, or reason, of the strike, on its planning, or the direction of the strikers. The article, or items, of a strike and whether the articles are legitimate are matters that are not in every case simple to decide A strike, legal or illegal, justified or unjustified does not dissolve the employer–employee relationship.

Normally taking part in the illegal strike amounts to misconduct on the part of a workman for which they invite the punishment of dismissal. Whether the employer is free to punish dismissal from services in such cases has been subject to regular domestic enquiry to determine the quality of misconduct and quantum of punishment by finding out whether they were peaceful strikes or violent strikers. It is only after complying with these requirements, a workman if found guilty of the charges may be dismissed.

Lockouts

This is the only method adopted by the Employers against employees to make employees agree to their new rules and procedures. In lockouts, the employer temporarily closes the workplace or stops the work or takes action like suspending the workers to force them to follow the new terms and conditions.

Industrial Dispute Act 1947 Lay Offs, Retrenchment and Closure

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By INDIAFREENOTES

The term 'lay-off' has been defined under section 2 (kkk) of the Industrial Disputes Act, 1947, thus lay-off means the failure, refusal or inability of an employer on account of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Essentials of lay-off:

- (i) There must be failure, refusal or inability on the part of the employer to give employment to a workman.
- (ii) The failure, refusal or inability should be on account of shortage of coal, power or raw materials or accumulation of stocks or breakdown of machinery, or natural calamity, or any other connected reason.
- (iii) The workman's name should be on the muster rolls of the industrial establishment.
- (iv) The workman should not have been retrenched.

Lay-off is a measure to cope with the temporary inability of an employer to offer employment to a workman to keep the establishment as going concern. It results in immediate unemployment though temporary in nature. It does not put an end to the employer-employee relationship, nor does it involve any alteration in the conditions of service.

Further, lay-off occurs only in a continuing business. When the industrial establishment is closed permanently or it lock-out is declared by the employer, the question of lay-off has no relevance. Lay-off is justified only when it is in conformity with the definition given under Section 2 (kkk) of the Industrial Disputes Act.

Compensation for Lay-Off (Rights of Workmen):

According to Section 25 C of the Industrial Disputes Act, a workman who is laid-off is entitled to compensation equivalent to 50 per cent of the total basic wages and dearness allowance for the period of lay-off.

This right of compensation is, however, subject to the following conditions:

- (i) He is not a badli or a casual workman.
- (ii) His name should be borne on the muster rolls of the establishment.
- (iii) He should have completed not less than one year of continuous service under the employer.

A badli workman means a workman who is employed in place of another workman whose name is borne on the muster rolls of the establishment. However, such a workman ceases to be a badli workman on his completion of one year of continuous service in the establishment.

A workman is entitled to lay-off compensation at the rate equal to fifty per cent of the total of the basic wage and dearness allowance for the period of his lay off except for weekly holidays which may intervene. Compensation can normally be claimed for not more than forty-five days during any period of twelve months.

Even if lay-off exceeds forty-five days during any period of twelve months no compensation is required to be paid for the excess period if there is an agreement to that effect between the workman and the employer.

If the period of lay-off exceeds forty-five days, the employer has two alternatives before him, namely:

- (i) to go on paying lay-off compensation for such subsequent periods
- (ii) to retrench the workman.

Duties of the Employer in Connection with Lay-Off:

The following duties are laid down for the employer in connection with a lay-off:

(a) The employer must maintain a muster roll of workmen and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours notwithstanding that workman in any industrial establishment have been laid off.

(b) The lay-off must be for the reasons specified in Section 2(kkk).

(c) The period of detention of workmen if stoppage occurs during working hours should not exceed two hours after the commencement of the stoppage.

(d) The compensation for lay-off must be at the rate and for the period specified in Section 25-C of the Industrial Disputes Act.

Retrenchment

The term "Retrenchment" has been given a very wide meaning under Section 2(oo) of the ID Act to include termination by the employer for any reason whatsoever, other than a punishment given in disciplinary proceeding.

The provision further states that Retrenchment does not include:

- Voluntary retirement;
- Retirement on reaching age of superannuation;
- Termination of service of workman as a result of non-renewal of contract of employment;
- Termination of workman due to continuous ill-health

Conditions have to be fulfilled for retrenchment

Section 25F of the ID Act is a very essential provision for law relating to retrenchment.

If the conditions or requirements given in this provision are not followed by the employer, then the retrenchment of employee will be illegal and invalid.

According to this provision, a workman employed in any industry who has been in continuous service for not less than one year under an employer cannot be retrenched unless:

- The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- The workman has been paid compensation at the time of retrenchment;
- Notice in the prescribed manner is served on the appropriate Government.

Retrenchment of White-Collar Employees

The term white collar employees have nowhere been expressly defined under the Indian Law. However, white collar employees are those who work in the managerial capacity.

Thus, the employees who don't fall under the definition of "workman" under Section 2(s) of ID Act are white collar employees. The definition of workman any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

The definition of "workman" specifically excludes those persons who are employed in managerial or administrative capacity.

Closure

The Act defines "Closure" as the permanent closing down of a place of employment or part thereof. Here, the employer is constrained to close the establishment permanently. Nonetheless, the due procedure has to be complied with when it comes to rolling out a plan of closure; the said procedure, as set out by the Act, has been detailed below. These procedures, nonetheless, do not apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

Sec. 25FFF. Compensation to workmen in case of closing down of undertakings.

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

1 Explanation. An undertaking which is closed down by reason merely of

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

Special Provisions: The employer intending to do a closure of his establishment has to necessarily apply at least ninety days in advance to the appropriate government. A copy of the said application has to be given to the representatives of the workmen as well. The said application will be considered and a reasonable opportunity to be heard shall be given to the employer as well as the workmen. After considering the same, the appropriate government may or may not grant the employer to close down. Even here, if the government does not respond within sixty days from application, the permission will be deemed to have been granted. A similar provision for review of the decision exists even here.

Continuous Service

One year of continuous service entails an entitlement for compensation under the Industrial Disputes Act. A workman is said to be in continuous service if he is for that period in uninterrupted service. Interruption owing to sickness authorised leave, an accident, a strike which is not illegal, a lock and a cessation of work which is not due to the fault of the workman will not be taken into consideration for calculating the period of continuous service.

A workman could be deemed to have had one year of continuous service even if the worker hasn't had a year of continuous service if the worker was in employment for twelve calendar months preceding the date with reference to which calculation is to be made, and in the course of these twelve months, he actually worked for not less than one hundred and ninety days in the case of employment in a mine and two hundred and forty days in any other case.

The Trade Union Act 1926

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By INDIAFREENOTES

The Trade Unions Act, 1926 provides for registration of trade unions with a view to render lawful organisation of labour to enable collective bargaining. It also confers on a registered trade union certain protection and privileges.

The Act extends to the whole of India and applies to all kinds of unions of workers and associations of employers, which aim at regularising labour management relations. A Trade Union is a combination whether temporary or permanent, formed for regulating the relations not only between workmen and employers but also between workmen and workmen or between employers and employers.

The different legislation on labour in the country are as follows:

- **Apprentices Act, 1961:** The object of the Act was the promotion of new manpower at skills and improvement and refinement of old skills through practical and theoretical training.
- **Contract Labour (Regulation and Abolition) Act, 1970:** The object of the Act was the regulation of employment of contract labour along with its abolition in certain circumstances.
- **Employees' provident funds and misc. Provision Act, 1952:** The Act regulated the payment of wages to the employees and also guaranteed them social security.
- **Factories Act, 1948:** The Act aimed at ensuring the health of the workers who were engaged in certain specified employments.
- **Minimum wages Act, 1948:** The Act aimed at fixing minimum rates of wages in certain employments.
- **Trade Union Act, 1926:** The Act provided for registration of trade unions and defined the laws relating to registered trade unions.

Registration of Trade Unions

The Trade Union Act of 1926 was passed in the year 1926 but it came into effect in the year 1927. The Act contains the provisions related to registration, regulation, benefits, and protection for trade unions. Section 3 to Section 14 of Chapter 2 of the Act deals with the registration of trade unions in the territory of India.

Section 3: Appointment of Registrars

Section 3 of the Act empowers the appropriate government to appoint a person as the registrar of a trade union. The appropriate government can also appoint as many additional and deputy registrars in a trade union as it deems fit for carrying on the purposes of the Act.

Section 4: Mode of Registration

Section 4 of the Act provides for the mode of registration of the trade union. According to the Section, any seven or more than seven members of a trade union may by application apply for the registration of the trade union subject to the following two conditions:

- **At Least 7 members** should be employed in the establishment on the date of the making of the application.
- **At Least 10% or a hundred members** whichever is less, are employed in the establishment should be a part of it on the date of making the application.

Section 6: Provisions to be contained in the rules of a Trade Union

Section 6 of the Act enlists the provisions which should be contained in the rules of trade union and it provides that no trade union shall be recognized unless it has established an executive committee in accordance with the provisions of the Act and its rules specify the following matters namely:

- Name of the trade union;
- The object of the establishment of the trade union;
- Purposes for which the funds with the union shall be directed;
- A list specifying the members of the union shall be maintained. The list shall be inspected by office bearers and members of the trade union;
- The inclusion of ordinary members who shall be the ones actually engaged or employed in an industry with which the trade union is connected;
- The conditions which entitle the members for any benefit assured by the rules and also the conditions under which any fine or forfeiture may be imposed on the members;
- The procedure by which the rules can be amended, varied or rescinded;
- The manner within which the members of the manager and also the alternative workplace bearers of the labour union shall be elective and removed;
- The safe custody of the funds of the labour union, an annual audit, in such manner, as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the workplace bearers and members of the labour union, and;
- The manner within which the labour union could also be dissolved.

Section 7: Power to call for further particulars and require alteration of the name

Section 7 of the Act furnishes upon the registrar power to call for information in order to satisfy himself that any application made by the trade union is in compliance with the Section 5 and 6 of the Act. in matters where the discrepancy is found the registrar reserves the right to reject the application unless such information is provided by the union.

This Section also confers power to the registrar to direct the trade union to alter its name or change the name if the registrar finds the name of such union to be identical to the name of any other trade union or if it finds its name to so nearly resemble the name of any existing trade union which may be likely to deceive the public or members of either of the trade union.

Section 8: Registration

According to Section 8 of the Act, if the registrar has fully satisfied himself that a union has complied with all the necessary provisions of the Act, he may register such union by recording all its particulars in a manner specified by the Act.

Section 9: Certificate of Registration

According to Section 9 of the Act, the registrar shall issue a registration certificate to any trade union which has been registered under the provision of Section 8 of the Act and such certificate shall act as conclusive proof of registration of the trade union.

Section 10: Cancellation of Registration

The registrar, according to Section 10 of the Act has the power to withdraw or cancel the registration certificate of any union in any of the following conditions:

- On an application made by the trade union seeking to be verified in such manner as may be prescribed;
- If the registrar is satisfied with the fact that the trade union has obtained the certificate by means of fraud or deceit;
- If the trade union has ceased to exist;
- If the trade union has wilfully and after submitting a notice to the Registrar, has contravened any provision of the Act or has been continuing with any rule which is in contravention with the provisions of the Act;
- If any union has rescinded any rule provided under Section 6 of the Act.

Section 11: Appeals

According to Section 11 of the Act, any union which is aggrieved by a refusal to register or withdrawal of registration made by the registrar can file an appeal:

- In any High Court, if the head office of the trade union is located in any of the presidency towns;
- In any labour court or industrial tribunal, if the trade union is located in such a place over which the labour court or the trade union has jurisdiction;
- If the head office of the trade union is situated in any other location, an appeal can be filed in any court which is not inferior to the Court of an additional or assistant judge of a principal Civil Court of original jurisdiction.

Section 12: Registered office

Section 12 of the Act lays down that all communications and notices to any trade union must be addressed to its registered office. If a trade union changes the address of its registered office, it must inform the same to the registrar within the period of fourteen days in writing and the registrar shall record the changed address in the register mentioned under Section 8 of the Act.

Section 13: Incorporation of Registered Trade Union

Section 13 of the Act states that every trade union which is registered according to the provisions of the Act, shall:

- Be corporate by the name under which it is registered.
- have perpetual succession and a common seal.
- Power to contract and hold and acquire any movable and immovable property.
- By the said name can sue and be sued.

Rights and Liabilities of Registered Trade Unions

Section 15 to Section 28 elucidates the rights which a registered trade union has and also the liabilities which can be imposed against it.

Section 15: Objects on which general funds may be spent

Section 15 of the Act lays down the activities only on which a registered trade union can spend its funds. These activities include:

- Salaries to be given to the office-bearers.
- The cost incurred for the administration of the trade union.
- Compensation to the workers due to any loss arising out of any trade dispute.
- Expenses incurred in the welfare activities of the workers.
- Benefits conferred to the workers in case of unemployment, disability, or death.
- The cost incurred in bringing or defending any legal suit.
- Publishing materials with the aim of spreading awareness amongst the workers.
- Education of the workers or their dependents.
- Making provisions for medical treatment of the workers.
- Taking insurance policies for the welfare of the workers.

The Section also provides that the reason of non-contribution to the said fund and also a contribution to the fund can not be made as a criterion for admission into the union.

Section 16: Constitution of a Separate Fund for Political purposes

Section 16 provides that a trade union, in order to promote the civic and political interests of its members can constitute a separate fund from the contributions made separately for the said purposes. No member of the union can be compelled to contribute to the fund.

Section 17: Criminal conspiracy in Trade Disputes

Section 17 of the Act states that no member of a trade union can be held liable for criminal conspiracy mentioned under subSection 2 of Section 120B regarding any agreement made between the members of the union in order to promote lawful interests of the trade union.

Section 18: Immunity from civil suits in certain cases

Section 18 of the Act immunises the members of trade union from civil or tortious liabilities arising out of any act done in furtherance or contemplation of any trade disputes.

For example, in general, a person is subject to tortious liability for inducing any person to breach a contract. But, the trade unions and its members are immune from such liabilities provided such inducement is in contemplation or furtherance of any trade disputes. Further, the inducement should be lawful and should not involve any aspect of any violence, threat or any other illegal activity.

Section 19: Enforceability of agreement

According to Section 25, any agreement in restraint of trade is void. But under Section 19 of the Trade Unions Act, 1926 any agreement between the members of a registered trade union in restraint of trade activities is neither void nor voidable. However such right is available only with the registered trade unions as the unregistered trade unions have to follow the general contract law.

Section 20: Right to inspect the books of Trade Union

According to Section 20 of the Act, the account books and the list of the members of any registered trade union can be subjected to inspection by the members of the trade union at such times as may be provided under the rules of the trade union.

Section 21: Rights of minors to membership of Trade Union

Section 21 provides that a person who is above 15 years of age can be a member of any trade union and if he becomes a member he can enjoy all the rights conferred upon the members of the trade union subject to the conditions laid down by the trade union of which he wants to be a part of.

Section 21-A: Disqualifications of office-bearers of Trade Union

Section 21A of the Act lays down the conditions the fulfilment of which disqualifies a person from being a member of the trade union. The conditions laid down in the Act are as follows:

- If the member has not attained the age of majority
- If he has been convicted by any of the courts in India for moral turpitude and has been sentenced to imprisonment unless a period of five years has elapsed since his release.

Section 22: Proportion of office-bearers to be connected with the industry

Section 22 of the Act mandates that not less than half of the members of the trade union should be employed in the industry or work with which the trade union is connected. For example trade union is made for the welfare of the agricultural labourers then, as per this Section half of the members of such a trade union should be employed in agricultural activities.

Section 23: Change of name

Section 23 states that any registered union is free to change its name provided it does so with the consent of not less than 2/3rd of its members and subject to the fulfilment of the conditions laid down in Section 25 of the Act.

Section 24: Amalgamation of Trade Unions

Section 24 lays down that two or more trade unions can join together and form one trade union with or without dissolution or division of the fund. Such amalgamation can take place only when voting by half of the members of each trade union has been effectuated and that sixty per cent of the casted votes should be in favour of the proposal.

Section 25: Notice of change of name or amalgamation

Section 25 of the Act provides that:

- A notice in writing of every change of name and of every amalgamation which is duly signed by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, should be sent to the Registrar.
- If the Registrar feels that the proposed name is identical with the name of any other existing Trade Union or, it so nearly resembles such name as it is likely to deceive the public or the members of either Trade Union, the Registrar may refuse to register the change of name.
- If the Registrar of the State in which the head office of the amalgamated Trade Union is situated is satisfied that the provisions of this Act have complied with the amalgamation shall be given effect from the date of such registration.

Section 27: Dissolution

Section 27 of the Act talks about the dissolution of a firm as follows:

- If a registered trade union has been dissolved, a notice of such dissolution which must be signed by seven members and by the Secretary of the Trade Union should be served to the registrar within 14 days of such dissolution and if the registrar is satisfied that the dissolution has been effected in accordance with the rules laid down by the trade union may register the dissolution.
- Where a union has been dissolved but its rules do not lay down the way in which the fund is to be distributed after its dissolution, the registrar may distribute the funds in any prescribed manner.

Section 28: Returns

Section 28 provides that each trade union should send the returns to the registrar annually on or before such a day as may be prescribed by the registrar. The return includes:

- General statement
- Audit report
- All the receipts and expenditure incurred by the trade union
- Assets and liabilities of the firm on the 31st day of December

Sub-Section 2 of the Section provides that along with the general statement a copy of the rules of the trade union corrected up to the date of dispatch thereof and a statement indicating all the changes made by the union in the year to which the statement is referred to be sent to the registrar.

Whenever any registered trade union alters its rules, such alterations should be conveyed to the registrar in a period of not less than 15 days from making such alterations.



Regulations

Section 29 to Section 30 of Chapter 4 of the Act lays down the regulations which shall be imposed on the trade union.

Section 29: Power to make regulations

Section 29 of the Act confers the right on the appropriate government to make provisions in order to ensure that the provisions of the Act are fairly executed. Such regulations may provide for any or all of the matters, which are as follows:

- The manner in which a trade union or its rules shall be registered;
- The manner in which the registration of a trade union has to be transferred which has changed its head office;
- The manner of appointment and qualification of the person who shall audit the accounts of the registered trade union;
- Circumstances under which the documents kept by the registrar shall be allowed to be inspected and also the fees that shall be levied in lieu of the inspection so made.

Section 30: Publication of Regulations

Section 30 states that:

- The power of making regulations conferred to the government is subject to the condition that such regulation has been made after the previous publication.;
- The date from which the regulation shall be given effect shall be specified in accordance with clause (3) of Section 23 of the General Clauses Act, 1897, and the date should not be less than three months from the date on which the draft of the proposed regulations was published for general information;
- The regulations which are made must be specified in the official gazette of India and it shall have the effect of an enacted law.

Penalties and Procedure

Section 31 to Section 33 of the Trade Union Act lays down the penalties and the procedure of its application upon a trade union which is subject to such penalty.

Section 31: Failure to submit returns

Section 31 states that:

- If any trade union was required to send any notice, statement or any document to the registrar under the Act and if the rule did not prescribe a particular person in the union to provide such information then in case of default each member of the executive shall be imposed with the fine extendible to five rupees. In case of continuing default, the fine may be extended to five rupees a week.
- If any person willfully makes or causes to be made any false entry or omission in the general statement required under Section 28 of the Act shall be punishable with fine extendible to 500 rupees.

Section 32: Supplying false information regarding Trade Unions

Article 32 states, the following:

- Any person who in order to deceive a member of any trade union or any other person who purports to be the part of the trade union,
- Gives a copy of the document with the pretext of it containing the rules of a trade union.
- Which he knows or has reason to believe that it is not a correct copy of such rules and alteration and,
- Any person with the like intent give the copy of any document purporting it to be a copy of the rules of a registered trade union which in reality is an unregistered union,
- Shall be imposed with fine which may extend to two hundred rupees.

Section 33: Cognizance of offences

Section 33 contains the provisions with respect to the cognizance of offence. It says that no court which is inferior to presidency magistrate or magistrate of the first class shall try an offence under the Act. courts can take cognizance of the offences under the Act only in the following cases:

- When the complaint has been made with the previous sanction of the registrar
- When a person has been accused under Section 32 of the Act, he shall be tried within six months of the commission of the alleged offence.

Collective Bargaining and Trade Disputes

When an organized body negotiates with the employer and fixes the terms of employment by means of bargaining is known as Collective Bargaining. The essential element of Collective Bargaining is that it is between interested parties and not from outside parties.

International labour organization in its manual in the year 1960 defined the meaning of collective bargaining as:

“Negotiations about working conditions and terms of employment between an employer, a group of employees or one or more employers organization on the other, with a view to reaching an agreement.” the terms of agreement are used to ascertain the rights and obligations by which each party is bound towards one another during the course of employment.

Section 8 of the Industrial Relations Act 1990 define trade dispute, according to the Act, industrial dispute refers to any dispute which arises between the employers and the workers and it is usually in connection with any one of the following:

- employment or non-employment,
- the terms or conditions of the employment,
- Something which affects the employment of any person.

Essential conditions for collective bargaining

- **Favourable political and social climate:** all the collective bargaining which took place in the past bears the testimony to the fact that favourable political and social climate is the prerequisite of collective bargaining. The reason for the same is quite obvious as almost all the trade unions in India subscribe to one or the other political view and therefore, trade unions usually favour the employees not on the basis of the merit of the issues they raise but on the basis of their political considerations.
- **Trade union:** in any democratic country like India which recognizes the right to speech as a fundamental right, the right to form a trade union is a direct consequence of it and so all the employers should recognize the trade unions and its representative.
- **Problem-solving attitude:** it means that both the parties while negotiating a bringing up their relative concerns should adopt a problem-solving attitude and should aim at amicably solving the problem without trying to put the opposite party into a loss.
- **Continuous dialogue:** the dialogue between the employer and the workers may sometimes end up without any fruitful negotiation or there may arise a bargaining impasse, in such a case the free flow of dialogue between the employer and employee should not be stopped and sometimes keeping aside the bone of contention helps bring up a better solution.

Purposes of collective bargaining

- To provide an opportunity for the workers to voice their complaints and grievances regarding the working conditions.
- To pave the way for the employer and workers to reach an amicable solution peacefully without having any ill will towards one another.
- To sort out all the disputes and conflicts between the employer and worker.
- To prevent any dispute which is likely to take place in the future by mutually agreeing on the contract.
- To foster a peaceful and stable relationship between the workers and the organization.